

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

NATIONAL CONFERENCE OF BAR
EXAMINERS,

Plaintiff,

v.

MULTISTATE LEGAL STUDIES, INC.,
d/b/a PMBR, ROBERT FEINBERG, and
DONA ZIMMERMAN,

Defendants.

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No.2:04-CV-03282-JF

DECLARATION OF ROBERT A. BURGOYNE

1. My name is Robert A. Burgoyne. I am over 21 years of age and, unless otherwise stated, I have personal knowledge of the matters addressed herein.

2. I am a partner in the Washington, D.C. office of Fulbright & Jaworski L.L.P. I have been practicing law for over 23 years. I am a graduate of the University of North Carolina School of Law. I have significant experience in handling complex civil litigation, including copyright infringement litigation.

3. NCBE has been a client of Fulbright & Jaworski L.L.P. for more than 15 years. I have been the principal attorney within our firm who has performed work for NCBE in this period. The work has included copyright infringement litigation against various entities and individuals involved in the bar review business. In addition to the present case, our firm has represented NCBE in prior litigation with PMBR, and in litigation against other bar reviews.

4. I have also represented other testing organizations in copyright-related litigation, in the United States and overseas.

5. My hourly rates during the course of this litigation ranged from \$465 - \$550 per hour. I am generally familiar with the rates of attorneys with comparable practices who are

practicing in Washington, D.C., and I believe such rates are reasonable for an attorney of my skill and experience. Indeed, my rates are often lower than the rate of attorneys with whom I work who have comparable experience. Given the non-profit nature of many of the clients for whom I do work, including NCBE, I try to keep my hourly rate lower than it would otherwise be. For example, my billing rate was raised by our law firm from \$465 per hour to \$525 per hour, effective January 1, 2005. At my request, my rate was lowered to \$495 per hour for the remainder of 2005.

6. As an additional vehicle for holding down our costs, I often do not bill the client for all hours worked and expenses incurred. In this litigation, for example, our billing records reflect that approximately \$76,000 in fees and \$27,000 in expenses were recorded to the file but not billed to NCBE (and are therefore not being sought here).

7. John O'Malley is a partner in the Los Angeles office of Fulbright & Jaworski L.L.P. He is a graduate of the University of California at Berkeley, Boalt Hall School of Law. He has been practicing law for almost 25 years, and a substantial part of his litigation practice involves intellectual property disputes. Mr. O'Malley was brought in to assist in the litigation because NCBE initiated this litigation in federal court in California and asserted a claim under California law. His hourly rate during the course of his involvement in this litigation was \$465 per hour.

8. Robert Darby is a partner in the Los Angeles office of Fulbright & Jaworski L.L.P. He is also a graduate of the University of California at Berkeley, Boalt Hall School of Law. He has been practicing law for over 30 years, and has substantial experience in complex commercial litigation. I asked Mr. Darby to handle certain third-party depositions in this case which were held on the West Coast. Part of my reason for doing so was to reduce the legal fees

incurred in connection with those depositions (which were noticed by the defendants). His hourly rate during the course of his involvement in this litigation ranged from \$525 - \$575 per hour.

9. Sarah Silbert is a senior associate in the Los Angeles office of Fulbright & Jaworski L.L.P. She received an M.B.A. from Columbia University, and a J.D. from the University of California at Berkeley, Boalt Hall School of Law. She has been practicing law for approximately eight years. Ms. Silbert has litigated intellectual property cases in federal courts throughout the country. She was brought in to assist in this litigation because it was initiated in federal court in California and asserted a claim under California law. Her hourly rate during the course of her involvement in this litigation was \$320 per hour.

10. Caroline Mew is a senior associate in the Washington, D.C., office of Fulbright & Jaworski L.L.P. She has been practicing law for approximately seven years. Ms. Mew has experience in other copyright infringement litigation involving testing organizations, as well as other complex civil litigation in federal court. She graduated with honors from the University of North Carolina School of Law. Ms. Mew's hourly rate during the course of this litigation ranged from \$295 - \$380 per hour.

11. George Gasper is an associate in the Washington, D.C., office of Fulbright & Jaworski L.L.P. He has been practicing law for approximately three years, and his practice focuses on civil litigation and antitrust matters. Mr. Gasper graduated *cum laude* from Georgetown University Law Center. Mr. Gasper's hourly rate during the course of his involvement in this litigation ranged from \$210 - \$295 per hour.

12. Rena Scheinkman is an associate in the Washington, D.C., office of Fulbright & Jaworski L.L.P. Ms. Scheinkman has been practicing law for approximately three years, and her

practice focuses on civil litigation. She graduated from American University Washington College of Law *summa cum laude*. Ms. Scheinkman's hourly rate during the course of her involvement in this litigation ranged from \$255 - \$295 per hour.

13. Sarah Warlick is an associate in the Washington, D.C., office of Fulbright & Jaworski L.L.P. Sarah has been practicing law for almost two years, and her practice focuses on litigation matters. She graduated from Georgetown University Law Center *cum laude*. Her hourly rates during the course of her involvement in this litigation ranged from \$180 - \$265 per hour.

14. David Chung is an associate in the Washington, D.C., office of Fulbright & Jaworski L.L.P. David has been practicing law for approximately one year, and his practice focuses on litigation matters. He graduated from the George Washington University School of Law, with honors. His hourly rate during the course of his involvement in this litigation ranged from \$185 - \$220 per hour.

15. Deborah Wallace, Kelley Demski, Elizabeth Yin, and Lydia Omardin are or have been legal assistants in the Washington office of Fulbright & Jaworski L.L.P. Their hourly rates during the course of their involvement were as follows: Ms. Wallace (\$150 - \$160 per hour); Ms. Demski (\$120 - \$150 per hour); Ms. Yin (\$150 per hour); and Ms. Omardin (\$150 per hour).

16. The rates billed in this matter and requested in this fee petition are Fulbright & Jaworski L.L.P.'s customary rates for the individuals in question.

17. NCBE seeks to recover fees for a total of 2,170.25 hours of service by attorneys and legal assistants at Fulbright & Jaworski L.L.P. These hours and the applicable fee rates are summarized on the chart attached hereto at Exhibit A. I have reviewed this chart, and, to the best of my knowledge and belief, it reflects an accurate calculation our hours and fees. The hours and

fee rates are also reflected in the bills attached at Exhibit B, which are true and accurate copies of billing statements submitted by my firm to NCBE, except that certain information in the billing narratives has been redacted. Also, billing information for fees not being sought in this petition has been redacted.

18. I have reviewed the fees being requested in this petition and believe that the hours claimed are reasonable. NCBE is not seeking to recover all of the fees billed by and paid to Fulbright & Jaworski L.L.P. in this matter. For example, we have omitted time billed by those associates and legal assistants whose work in the case was limited; we have omitted time billed by a summer associate and litigation support professionals; and we have omitted most if not all time billed for work relating to PMBR's efforts to have the case proceed in Pennsylvania rather than California, and for time billed in opposing PMBR's efforts to compel the production of documents from third-party ACT, Inc., because PMBR prevailed in those efforts. Approximately \$140,000 in fees paid by NCBE to Fulbright & Jaworski have been omitted from this fee petition. This is on top of the \$76,000 in fees for services that were not billed to NCBE, and thus are not part of NCBE's fee application.

19. NCBE seeks to recover a total of \$939,416.25 in attorney's fees billed by and paid to Fulbright & Jaworski.

20. NCBE also seeks recovery of \$35,136.84 in expenses not covered in its bill of costs as part of its reasonable attorneys' fees. The table attached at Exhibit C lists the expenses billed by Fulbright & Jaworski that are sought by NCBE. I have reviewed this table and, to the best of my knowledge and belief, it reflects an accurate calculation of the expenses which we seek. Spreadsheets detailing the expenses are attached at Exhibit D. I have reviewed the expenses requested and believe them to be reasonable. They do not represent all expenses

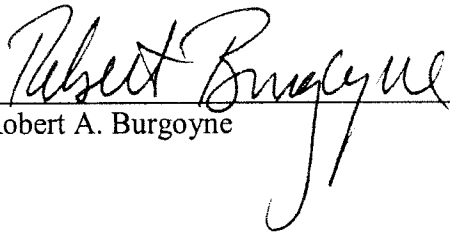
actually paid to date by NCBE. Moreover, significant expenses for electronic research have been written off by Fulbright & Jaworski L.L.P., resulting in no charge to NCBE and no request for reimbursement by the defendants. As reflected in the spreadsheet for electronic research at Exhibit D, over \$27,000 of electronic research was performed for this case (much of which resulted from PMBR's attempted reliance upon hundreds of state and federal cases and other legal authorities as the purported sources for its questions), but only \$1,500.38 was billed to NCBE.

21. NCBE seeks to recover prejudgment interest on its damages award. The chart attached at Exhibit E explains the method we used to derive the interest rates used for the prejudgment interest calculations set out in the accompanying memorandum of law. I have reviewed the calculations, and, to the best of my knowledge and belief, they are accurate.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed

September 8, 2006


Robert A. Burgoyne